

# Memorandum



BIA 09-05

Subject	Date
CASE HOLD - Texas Unauthorized Use of a Vehicle	May 20, 2009

To Board Legal Staff

From Juan Osuna, Chairman *JO*

Pursuant to 8 C.F.R. § 1003.1(e)(8)(iii), I am directing that the adjudication time limits be temporarily suspended in individual cases presenting the issue of whether the crime of Unauthorized Use of a Vehicle, in violation of Texas Penal Code § Ann. 31.07(a), is an aggravated felony crime of violence under section 101(a)(43)(F) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(43)(F).

The Fifth Circuit Court of Appeals has found that this statute is a crime of violence. *Brieva-Perez v. Gonzales*, 482 F.3d 356 (5th Cir.2007), *United States v. Galvan-Rodriguez*, 169 F.3d 217 (5th Cir.1999). See also *Matter of Brieva-Perez*, 23 I&N Dec. 266 (BIA 2005).

This issue was raised in a petition for certiorari filed in *Serna-Guerra v. Holder*, 2008 WL 2228868 (5<sup>th</sup> Cir. May 30, 2008), *petition for reh'g denied*, 2008 WL 4775813, *petition for cert. filed* 77 U.S.L.W. 3449 (U.S. Feb. 2, 2009)(No. 08-983). The Solicitor General has asked the Supreme Court to grant the petition for certiorari, vacate the Fifth Circuit's decision, and remand to the circuit court to further reconsider the issue. The Solicitor General points out that the Supreme Court has granted, vacated and remanded three other Fifth Circuit cases presenting the same issue, and the Government has filed a response before the circuit court in two of those cases indicating that it no longer adheres to its prior position that this statute is a crime of violence.

In light of these unusual circumstances, I am directing that cases turning on this issue be held. However, if a case can be resolved on other grounds, it does not need to be put on hold. If you do find a case that turns on the issue of this hold and cannot be resolved on other grounds, please bring it to the attention of your team leader or Senior Panel Attorney.